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CHILE

The following is a review of new development in Chilean income tax, marine, labor, copyright, and import/export laws.

I. AMENDMENTS TO CHILEAN INCOME TAX LAW

Law 18,489 of the Official Gazette of January 4, 1986 introduced several changes to the Income Tax Law:

(a) Tax rates on salaries were reduced for 1986, though not to the extent originally provided for in the January 31, 1984 Official Gazette under law 18,293 wherein even greater reductions were proposed. These reductions are now postponed until 1988. Law 18,293 of 1984 also introduced a system of taxing corporate income when the income is withdrawn from or distributed by the corporation. It also provided incentives for individuals to save by allowing a tax deduction of a certain percentage of their savings. The new law made certain technical amendments to these rules; therefore, an addendum providing for partnerships was included. Rules regarding deductibility of savings were also tightened by providing for a twenty percent deduction for shares of open corporations, held for one year, as long as the taxpayer is the first owner of the shares.

(b) The standard deduction for children and other dependents, for the purposes of the supplemental income tax on individuals (Impuesto Global Complementario), was abolished.

(c) Professionals are no longer obliged to file annual income tax returns. However, they will probably have other income which will oblige them to file a return to get a tax refund.

(d) Anti-tax avoidance provisions were included regarding transfers of property by shareholders or members of companies to the companies, or transfers of property at an inflated value.

II. NEW LAW REGARDING AUTOMOBILE MANUFACTURE AND IMPORTATION

Law 18,483 published in the Official Gazette of December 28, 1985, promulgated the new Legal Regime for the Automotive Industry. The following is a summary of its provisions.

(a) Automobile assemblers using CKD parts must include a minimum of thirteen percent local parts (four percent for 1986) and those using SKD parts must include a minimum of three percent. The Automotive Commission classifies components as local or foreign.

(b) Automobile assemblers are entitled to a tax credit for local parts up to either 42,000.00, or thirty-five percent of the customs value of the automobile. There is also a tax credit for export of local components of twenty percent of the FOB value of the exports, up to a maximum of twenty percent of the customs value of the components imported under the programs approved by the Automotive Commission. Both these credits will be reduced over the years.

(c) For 1986, imports of components for assembly of cargo vehicles, with a cargo capacity of up to 1,672 kilos and motors of over 850 c.c., are subject to an excess customs duty of fifty percent of the general customs tariff.

(d) Imported vehicles and parts are subject to a special tax on their import calculated in accordance with the size of the motor, with a minimum of fifteen percent of the customs value and a maximum of \$7,000. This special tax is reduced for cargo vehicles and their parts, for vehicles for ten or more passengers, and for special vehicles such as tractors and ambulances.

(e) In addition to the taxes mentioned in (d) above, imported vehicles and parts are subject to a special tax on their importation of eighty-five percent of the customs value in excess of \$5,000. For cargo vehicles of 500-2,000 kilos capacity, jeeps, station wagons and their parts, the tax is 100 percent of the value in excess of \$6,000. This special tax does not apply to cargo vehicles with over 2,000 kilos capacity, vehicles for more than fifteen passengers, and their parts, or to special vehicles such as tractors and ambulances.

(f) From the date of publication of the law, the importation of used cars is forbidden, with certain exceptions such as ambulances, fire engines, and other special use vehicles.

III. NEW CHILEAN MERCHANT MARINE LAW

Law 18,454 published in the Official Gazette of November 11, 1985 amends the Law for the Development of the National Merchant Marine (Decree Law 3,059 of 1976) and other laws in

numerous important respects. The following is a summary of the amendments.

(a) The Navigation Law provides that, in order for a vessel owned by a corporation to be considered Chilean, the corporation must have its principal domicile and real and effective seat of operations in Chile. Its president, manager, and the majority of its directors or administrators must be Chilean, and the majority of its capital must belong to Chilean persons or corporations. The law formerly provided that a corporation holding shares in the ship-owning corporation, must be seventy-five percent owned by Chilean persons or corporations to be considered Chilean. This latter requirement has now been removed.

(b) Changes are made in the rules as to reservation of cargo to Chilean vessels. In essence, however, the rule remains that Chile will apply the same cargo reserve as regards a foreign country's vessels as that foreign country applies to Chilean vessels. Thus, if the foreign country reserves to its own vessels fifty percent of the cargo carried to or from that country, Chile will apply the same reserve as regards that country's vessels.

(c) For the purposes of Marine Merchant Law, the designation of a ship as Chilean has been redefined. Vessels not over five years old, bareboat, chartered by Chilean shipowners with an option to purchase within a maximum of eight years (ten years if the vessel is less than one year old) are considered Chilean. Also included are vessels chartered by Chilean shipowners for up to six months which are renewable, with Transport Commission Authorization for up to six more months. The Commission may also authorize the classification of a vessel as Chilean in other special cases set out in Article 6 of the Law.

(d) Rules are provided for the state's purchase of special vessels for national security purposes by means of bids offered by Chilean shipowners.

(e) It is expressly provided that Chilean shipowners may participate in shipping conferences, pools, or consortiums without infringing on the Anti-Monopolies Law (Decree Law 211 of 1973).

(f) Some amendments were made to the rules reserving coastal shipping to Chilean shipowners. Foreign vessels may bid for the right to participate in coastal shipping where the cargo exceeds 900 tons. The previous figure was 5,000 tons.

(g) The chartering of Chilean vessels to non-Chilean entities

or persons is exempt from the Value Added Tax.

(h) The exemption from the forty percent Additional Tax on royalties for technological transfers to Chilean shipowners or shipbuilders was maintained; the requirements for the exemption were simplified.

(i) Value Added Tax on the importation of vessels, on the first sale of Chilean-built vessels, and on the importing of materials for the construction of export-bound vessels can be deferred interest-free.

(j) Payment of customs duties may be deferred on the importing of vessels of over 3,500 tons. Such vessels are not subject to the general rate of Customs duties if the Ministry of Economy certifies that Chilean shipbuilders are not in a position to construct them.

(k) A special tax of twenty percent of the charter hire is imposed upon the charter of foreign vessels involved in coastal shipping around Chile and on foreign vessels where the charter permits or does not prohibit the use of the vessel for coastal shipping. It is therefore important for foreign shipowners to include a prohibition in their charters.

IV. AMENDMENTS TO THE LABOR UNION LAW

Decree Law 2,756 of 1979 deals with the organization of Labor Unions. It is one of a group of labor laws made by the present government that has been criticized as being anti-labor.

Law 18,464 (Official Gazette of November 21, 1985) amends Decree Law 2,756 in various respects. The amendments are mainly of a technical nature. For example, the rules as to the employer's obligation to allow labor union leaders time off to devote themselves to their duties as such are amended. It is no longer necessary for a member of a union to renew his authorization every two years in order for their employers to deduct union dues from his wages, nor for a union to renew its affiliation every two years to a federation or confederation of unions.

V. AMENDMENTS TO THE FOREIGN INVESTMENT LAW

Law 18,474 amends the Foreign Investment Law (Decree Law 600 of 1974, as amended and codified by Decree Law 1,748 of 1977) in several important respects.

(a) For investments of fifty million U.S. dollars or more, or the equivalent in other foreign currency, if the investments are in industrial or "non-mining extractive" projects, the foreign investor may be allowed up to eight years in which to bring in the foreign capital. The normal period is three years; for mining investments it is eight years, extendable to twelve if the investments are in industrial or extractive (including mining) projects, the following special rights may be granted to the foreign investor:

(i) The period during which the foreign investor is entitled to a fixed income tax rate of 49.5% may be extended from the normal period of ten years to one "compatible with the estimated duration of the project," with a maximum of twenty years;

(ii) for the respective period referred to in (i) above, the tax treatment of depreciation, carry-forward of losses, and start-up expenses may be kept unchanged for the foreign investor or the receiving entity. In addition, the foreign investor or the receiving entity may keep its accounts in foreign currency. These rights, as well as the right to a fixed income tax rate, may be renounced at a later date by the foreign investor; and

(iii) if the project involves the export of all or part of the goods produced, the foreign investor or the receiving entity may be granted the additional rights, up to the respective period referred to in (i) above, and to keep part or all of the foreign currency generated by the exports outside the country, to be used to pay start-up costs, to remit profits or capital, or for other payments authorized by the Central Bank of Chile.

This latter right (to keep export-generated foreign currency abroad) must be approved by the Executive Committee of the Central Bank of Chile, as well as by the Foreign Investments Committee. Income generated by such foreign currency will be considered to be Chilean income for tax purposes. The taxable profits of the receiving entity, to the extent that they relate to such foreign currency, shall be considered remitted, distributed or withdrawn for tax purposes on December 31 of each year.

(b) Changes were made in calculating the fixed income tax rate of 49.5% for foreign investors. Foreign investors may opt to adjust the calculation to the new system of taxing corporate income upon withdrawal or distribution by the corporation (Law 18,293, Official Gazette of January 31, 1984).

(c) Regarding non-Chilean capital goods, the existing law al-

lows foreign investors the right to keep unchanged the Value Added Tax and Customs duties systems. This right is now extended to the receiving entities for the amount of the foreign investment.

(d) The existing law provides that capital can be re-exported only upon the disposal of the shares or rights representing the foreign investment, or upon the sale or liquidation of the entities acquired or formed with the investment. The new law makes it clear that either total or partial liquidation will suffice.

(e) Special provision is made as regards the tax treatment of Chilean investors which make authorized investments in foreign corporations which in turn set up a branch in Chile.

VI. AMENDMENTS TO THE COPYRIGHT LAW

Producers of video-cassettes, records and cassettes have long complained of the absence of any effective criminal sanctions protecting privacy rights (Law 18,443). The law expressly provides for imprisonment up to 540 days for those who, "in contravention of the provisions of this Law or of the rights protected by it, take part, for profit, in the reproduction, distribution to the public or introduction into the country of, and those who acquire or possess for the purposes of sale: phonograms, videograms, phonographic records, cassettes, videocassettes, movies or cinematographic films, whether Chilean or foreign." However, as regards videograms and videocassettes, the provision is effective only from January 1, 1987. This is presumably to avoid a large spate of immediate prosecutions. Prison sentences and fines are also provided for those who make unauthorized use of or falsify another's works. Some new definitions are added to the Law, including definitions of "phonogram" and "videogram."

The fees for registration in the Intellectual Property Register are changed. There is a significant amendment: a fee is charged for the registration of "computer programs and logical supports." This clearly implies that computer programs may be the subject of copyright. This has been open to doubt; but it is still not certain whether or not a computer program is a "literary work."

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VII. Double Taxation Treaty

On December 19, 1985, Argentina and Chile exchanged ratification instruments corresponding to the "Double Taxation Treaty between the Republic of Argentina and the Republic of Chile" which was executed on November 13, 1976. Article 24 of this Treaty covers income, capital, and patrimony taxes. The Treaty has been effective since December 19, 1985.

CARDENAS, HOPE & OTERO MONSEGUR

Abogados

Buenos Aires, Argentina